IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL.

Criminal Appeal No. 613/2001

(Old No. 1583 of 1989)

1- Abtar Singh S/o Magai Singh

2- Gurnam Singh,

3- Pritam Singh,

4- Satnam Singh,

5- Harnam Singh,

6- Makhan Singh,

All sons of Abtar Singh,

7- Jeet Singh S/o Bhola Singh,

All R/o Village Tukri P.S. Sitarganj,

District Nainital ..... Appellants.

Vs.

Stat of U.P. .... Respondent.

Sri A.S. Gill, learned Counsel for the appellants.
Sri A. Rab, and Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

This criminal appeal, under Section 374(2) Cr.P.C. has been preferred by the accused-appellants, against the judgment and order dated 19-7-1989, passed by Special Judge /Addl. Sessions Judge, Nainital, in S.T. No. 154/1987. Vide impugned judgment and order the accused-appellants Abtar Singh and Jeet Singh were convicted for the offences U/Ss 147, 302/149, 307/149, 323/149 I.P.C. and both of them were sentenced to two years R.I. U/S 147 I.P.C.; life imprisonment U/S 302/149 I.P.C.; ten years R.I. U/S 307/149 I.P.C. and six months R.I. U/S 323/149 I.P.C. The other accused-appellants Gurnam Singh, Pritam Singh, Satnam Singh, Harnam Singh and Makhan Singh

were convicted U/Ss 148, 302/149, 307/149, and 323/149 I.P.C. and each of them were sentenced to two years R.I. U/S 148 I.P.C.; imprisonment for life U/S 302/149 I.P.C.; ten years R.I. U/S 307/149 I.P.C. and six months R.I. U/S 323/149 I.P.C. All the sentences were to run concurrently.

2- The prosecution case in brief is that Mukhtiar Singh lodged the F.I.R. Ext. Ka.2. at the Police Station Nanakmatta on 15.6.1986 with the allegations that Pritam Singh S/o Amar Singh, Kala Singh S/o Sundar Singh and Makhan Singh S/o Banta Singh were loading forest wood illegally in three Dunlop Carts. Brother of the informer, viz. Makhan Singh, informed the Forester Hari Dutt Pathak about this theft. On this information, Hari Dutt Pathak caught hold of all the Dunlop carts in the forest. Thereafter, Hari Dutt pathak came to the village of the informant along with Makhan Singh. Both of them stopped in front of the house of Makhan Singh in the street and sent a child to call the informant. In the meantime the accused persons, who had received the information about the seizure of the wood came at the door of the informant. Accused Abtar Singh was armed with a Lathi, Pritam Singh was having a spear, Gurnam singh had a knife, Satnam Singh had an axe, Harnam Singh was armed with a Kampa, Makhan Singh was armed with a gun and Jeet Singh S/o Bhola Singh was having a Lathi. Accused Gurnam Singh said to the informant that his brother Makhan Singh has got their wood seized and they will not leave them alive. The accused persons hurled abuses upon them. The informant, his brother Makhan Singh and Chand Singh asked the accused not to hurl abuses upon them. At this, the accused persons, in furtherance of their common object, started assaulting the informant and his

brothers Makhan Singh and Chand Singh with their respective weapons. Due to the injuries inflicted upon Chand Singh, by the accused persons, Chand Singh died on the spot. Uttam Kaur and Pritam Kaur also came to the rescue of the informant and his brothers, but these ladies too were assaulted by the accused persons. The occurrence was also witnessed by Uttam Singh and Jeet Singh. These two witnesses also asked the accused to deter in their attempts. Thereafter the accused persons ran away towards their house leaving Chand Singh dead on the spot. The informant went to the Police Station along with his injured brother Makhan Singh to lodge the first information and the dead body of Chand Singh was left at the spot in the care of other villagers.

3- On the basis of written information, the Head Moharrir of the P.S. Rami Ram prepared chick report, Ext. Ka.8 and made entries in the G.D. about the registration of the case, the extract of which is Ext. Ka.9. This witnesses also took the blood-stained shirt of the complainant in Supurdagi and prepared the Fard Ext. Ka.10. S.I. J.P. Singh started investigation in the case. He sent the injured for medical examination and proceeded to the place of occurrence. He performed inquest on the dead body of Chand Singh and prepared inquest report, Ext. Ka.12. Thereafter the dead body was sent for post mortem in a sealed state through constable Surendra Singh. The I.O. took in to possession the blood-stained and plain earth from the place of the occurrence and prepared Fard, Ext. Ka .11. He also prepared site-plan, Ext. Ka.13 and after completion of the investigation, submitted charge sheet, Ext. Ka.14, against the accused persons.

4- After committal of the case to the court of Session, the learned Session Judge farmed charges U/Ss 302/149,307/149, and 323 /149 I.P.C. against all the accused persons. The accused persons pleaded not guilty to the charges and claimed to be tried.

5- The prosecution, in order to prove its case, produced an many as eight witnesses, out of which P.W.1, Dr. B.P. Agarwal has conducted the post mortem on the dead body of Chand Singh, on 16.6.1986, at 2.30 P.M. in Civil Hospital, Haldwani and found the following ante-mortem injuries on his person:-

1- Incised wound 3cm x 1cm x muscle deep on the front of left upper arm, just below shoulder joint.
2- Incised wound 2cm x 0.75 cm x lung deep, on the left side back of chest, at the level of 6th dorsal vertebrae, 3cm from the mid line of exploration the borders of 6th and 7th ribs. Inter costal space were clean cut underline muscle of back pleura and lower lobe of lung torn and lacerated on posterior aspect.

On internal examination, the witness found that left pleura was cut and there was blood in the cavity, semi-digested food in the stomach and the small and large intestine were having stool and urine in the bladder. According to the Doctor, the cause of death was due to shock and haemorrhage, as a result of ante-mortem injuries. It was also opined that the death could be caused on 15-6-1986 in between 3-00 and 4-00 P.M. This witness has proved the post mortem report, Ext. Ka.1.

6- P.W.2, Makhan Singh S/o Bhagwan Singh is a witness of fact. He has narrated the prosecution story.

He had deposed that all the accused persons were armed with their respective weapons, i.e. Abtar Singh and Jeet Singh were having Lathis; Pritam Singh had a spear, Makhan Singh had a gun, Gurnam Singh was armed with a knife; Satnam Singh had an axe and Harnam Singh was armed with a Kampa. The accused persons started abusing Makhan Singh S/o Saudagar Singh. Hearing the abuses, this witness also reached at the spot with intention to avoid the fight. When he asked the accused to refrain from hurling the abuses, the accused Gurnam Singh gave knife-blows to Chand Singh and Makhan Singh S/o Saudagar Singh. Accused Pritam Singh gave the spear blow to Chand Singh. He also alleged that the accused persons also assaulted Pritam Kaur and Uttam Kaur with Lathi. He and Mukhtiar Singh were also assaulted by the accused persons. This witness also deposed that when accused Pritam Singh was inflicting spear injuries, Pritam Kaur and Uttam Kaur tried to snatch the spear from him and the spear caused injury to Pritam Singh.

7- P.W.3, Mukhtiar Singh, is the complaint of the case. He is also a witness of fact. He has narrated the prosecution story and supported the deposition of P.W.2, Makhan Singh. He has also proved the F.I.R. lodged by him at the Police Station.

8- P.W.4, Dr. Kalyan singh is a formal witness. He has examined the other injured persons. At the time of this occurrence he was posted as Medical officer in P.H.C. Sitarganj. On 15-6-1986 at 9.15 P.M. he medically examined Mukhtiar Singh S/o Saudagar Singh and found the following injuries on his person:-

Incised wound 1cm x 0.3cm over mid-line, right upper back of chest, with ½ cm depth. The injury was fresh and blood was oozing form it. The margins were inverted. The injury was caused by some sharp object.

On 15-6-1986 at 9.25 P.M. he medically examined Makhan Singh S/o Bhagwan Singh and found the following injuries on his person:-

1- Contusion over upper part of shoulder, 4cm x 2cm. in side. The colour was reddish.
2- Contusion on inner side of right knee joint, 4cm x 2 /12 cm. The colour was redddisht.
3- Contusion over left side hip, 4cm x 2cm. The colour was reddish.
4- Contusion over back of left shoulder, 3cm x 2cm. Colour was reddish.

In the opinion of the Medical Officer the injuries were simple and caused by blunt object. The duration of the injuries was fresh.

Injured Pritam Kaur was examined on the same day at 9.45 P.M. and following injuries were found on her person:

1- Contusion over left side lower thigh and knee, 6cm x 4cm. The colour of the wound was reddish blue.

2- Contusion over right side of lower thigh with upper part of knee. The colour was reddish pink.

In the opinion of the Medical Officer the injuries were caused by some blunt object and were fresh and simple in nature.

The same day at 9.35 P.M. this witness medically examined Uttam Kaur; and found the following injuries on her person:-

1- Contusion over right side middle back 4cm x 2cm. The colour was reddish.
2- Contusion over left side upper hip, 4cm x 2cm. The colour was reddish and was caused by some blunt object.
3- Complains of pain all over the body but there was no mark of external injury.

In the opinion of the Medical Officer the injuries were caused by some blunt object. Duration was fresh and the nature of the injuries was simple.

This witness has also proved the injury reports of the above injured persons as Ext. Ka.3 to Ka.6 respectively.

9- P.W.5, Makhan Singh S/o Saudagar Singh is also a witness of fact. This witness has fully supported the prosecution case and narrated the entire prosecution story and the manner in which the occurrence had taken place.

10- P.W.6, Hari Dutt Pathak is a witness of seizure of wood. This witness has deposed that he came to village Tukri along with Makhan Singh and another Pritam Singh in order to obtain permit of the wood. When they reached near the house of Makhan Singh S/o Saudagar

Singh, he started going towards his house. At this accused Gurnam Singh came to him and started fight. Seeing it he slipped towards the forest and in the forest Pritam Singh and his colleagues obtained the permit forcibly from him by showing the fear of death. Therefore, he lodged report Ext. Ka.7 on 16.6.86 against Pritam Singh, Makhan Singh and Kala Singh.

11- P.W.7, S.I. J.P. Singh is the Investigating Officer of the case. he is a formal witness. This witness has narrated about the steps taken by him during the investigation and proved the prosecution papers.

12- P.W.8, Constable Brijendra Pal Singh had taken the dead body of deceased Chand Singh in a sealed state to the Civil Hospital Haldwani for postmortem.

13- P.W.9, H.C. Rami Ram is also a formal witness. This witness had prepared chick report, Ext. Ka,8 on the basis of the written report. Thereafter he made entries in the G.D. about the registration of the case. He also took into possession the blood-stained shirt of injured Mukhtiar Singh and prepared its Fard Ext. Ka.10.

14- The accused persons in their statements U/S 313 Cr.P.C. denied the prosecution allegations and alleged that they have been falsely implicated by the complainant party in the case in order to save themselves from the injuries caused to accused Pritam Singh.

15- The accused persons produced Dr. A.K. Saxena, Superintendent, P.H.C. Khatima, in their defence as D.W.1 According to this witness on 15-6-1986 at 7.48 P.M. he has medically examined accused Pritam Singh

at P.H.C. Khatima and found the following injury on his person:-

> Incised penetrating wound (stab) on right side of abdomen, 3.5cm x ¾ cm x abdominal cavity deep transverse. The wound was 9 ½ cm above and right to umbilicus.
>
> There was crepitues in right lower part of chest. Patient was in great agony of pain and he was conscious.

In the opinion of this witness the injury was caused by sharp pointed weapon. Duration was freshly bleeding. Recent. This witness proved the injury report Ext. Kha.5.

16- The learned Sessions Judge, on appreciation of the evidence on record and hearing the learned counsel for the parties, held the accused persons guilty of the charges levelled against them. Accused-appellants Abtar Singh and Jeet Singh were convicted for the offences U/Ss 147, 302/149, 304/149, 323/149 I.P.C. and both of them were sentenced to two years R.I. U.S. 147 I.P.C..; life imprisonment U/S 302/149 I.P.C.; ten years R.I. U/S 307/149 I.P.C. and six months R.I. U/S 323/149 I.P.C. The other accused-appellants Gurnam Singh, Pritam Singh, Satnam Singh, Harnam Singh and Makhan Singh were convicted U/Ss 148, 302/149, 307/149, and 323/149 I.P.C.; and each of them were sentence to two years R.I. U/S 148 I.P.C.; imprisonment for life U/S 302/149 I.P.C.; ten years R.I. U/S 307/149 I.P.C. and six months R.I. U/S 323/149 I.P.C. All the sentences were to run concurrently.

17- Being aggrieved, the accused persons have preferred the appeal before the Allahabad High Court which has been transferred to this court after creation of new State.

18- We have heard the learned counsel for the parties and perused the record.

19- Learned counsel for the appellants has first of all argued that the origin of the prosecution case is doubtful, hence no reliance can be placed on the evidence adduced by the prosecution with regard to the factum of the incident.

20- In order to assess the submission advanced by the learned counsel for the appellants, it would be relevant for us to peruse the eye-witnesses account first, and it reveals from the record the prosecution in order to bring the guilt of the accused/appellants home, has produced P.W.2, Makhan Singh S/o Bhagwan Singh, P.W.3, Mukhtiar Singh and P.W.5, Makhan Singh S/o Saudagar Singh as witnesses of the fact.

21- P.W.2, Makhan Singh S/o Bhagwan Singh has deposed that on the day of the occurrence, he had come to the house of Chand Singh and was laying the "Chhappar". Meantime Hari Dutt Pathak, P.W.6, a forester, along with Makhan Singh S/o Saudagar Singh and another person came over there and stood in front of house of Makhan Singh. At the same time the accused/appellants reached over there with their respective weapons. The accused started abusing Makhan Singh S/o Saudagar Singh and hearing the abuses, this witness reached at the spot with intention to avoid the fight and when the accused were asked to refrain from hurling abuses, accused/appellant Gurnam Singh gave a knife blow to Chand Singh and Makhan Singh S/o Saudagar Singh; accused Pritam Singh gave spear blow to Chand Singh and rest of the accused persons assaulted Pritam Kaur, Uttam Kaur and

Mukhtiar Singh with their weapons. He has further deposed that when accused Pritam Singh was assaulting with spear, the ladies, viz. Uttar Kaur and Pritam Kaur tried to snatch the spear from him with the result the spear caused injury to accused Pritam Singh. This witness has been cross-examined at length, but nothing has come out in his deposition which may discredit his testimony. Therefore, we do not find anything unusual in the testimony of this witness.

22- Further P.W.3, Mukhtiar Singh is the witness who has lodged the first information report. He has also witnessed the incident. He has deposed that he knew all the accused persons and the occurrence took place in between the houses of Chand Dingh and Makhan Singh S/o Saudagar Singh at about 3 to 4 P.M. He has further deposed that he was present at his house when his brother Makhan Singh had come along with Hari Dutt Pathak and another person from the forest and at the same time accused persons armed with their respective weapons came over there and started abusing his brother Makhan Singh. Meantime, Chand Singh and Makhan Singh S/o Bhagwan Singh also came over there and asked the accused persons not to hurl abuses. Hearing this the accused persons Abtar Singh and Jeet Singh stated assaulting his brother Makhan Singh with sticks and accused Pritam Singh caused spear blow to Chand Singh and when he fell down, he was given knife-blow at his neck and arm. When this witness went to rescue, he was assaulted by Kampa. He has deposed that accused Satnam Singh and armed with Kampa. This witness has further deposed that Pritam Kaur and Uttam Kaur also reached over there to rescue the male members from the accused persons but they too were assaulted by Pritam Singh. He has further deposed that

Pritam Kaur and Uttam Kaur caught hold of accused Pritam Singh with the result the spear caused injury to him. He has further deposed that on account of injuries sustained by Chand Singh, he died on the spot. This witness has also been cross-examined at length and in his cross-examination he has stated that the accused persons came in front of the house of Makhan Singh and not at his house. In the cross-examination of this witness nothing has come out which may indicate that the witness is either telling lie or falsely implicating the accused persons in the crime.

23- P.W.5, Makhan Singh S/o Saudagar Singh is the another witness of facts and has supported the entire prosecution story. He has deposed that on the date of the incident he was working as a Chaukidar in the forest of Jola Saal. He has further deposed that Pritam Singh, Makhan Singh and another person were loading the carts with forest wood and as the wood was illegal, therefore, he informed the Forester Hari Dutt Pathak. He along with Hari Dutt Pathak went at the spot and seized all the loaded carts. This witness has further deposed that Hari Dutt Pathak demanded permit of wood cutting, then he was told that the permit could be shown in village Tukri. Thereafter all the persons came to the village and reached near the house of this witness. All the accused persons came over there and said to Chand Singh that his brother Makhan Singh has got their wood seized therefore they will not leave him alive. The accused persons also started hurling abuses. When these persons asked the accused persons not to hurl abuses, then the accused persons started assaulting Chand Singh, Mukhtiar Singh, Uttam Kaur, Pritam Kaur and Makhan Singh with their weapons. This witness has stated that accused Pritam Singh was armed with a spear, accused

Satnam Singh with an axe, accused Hanam Singh with a Kampa, accused Gurnam Singh with a knife, accused Makhan Singh S/o Abar Singh with a gun and accused Abtar Singh and Jeet Singh were having sticks. All these accused persons assaulted with their weapons and on account of the assault Chand Singh died on the spot. The ladies Uttam Kaur and Pritam Kaur tried to snatch the spear of Pritam Singh and in the said scuffle the spear caused injury to accused Pritam Singh. This witness has also deposed that he thereafter ran away from the spot. This witness has also been cross-examined at length and nothing material has been detected in his cross-examination which may suggest that he is telling a lie.

24- The ocular account of all these witnesses finds further corroboration from the evidence of Hari Dutt Pathak, P.W.6, who was working as a Forester at the time of the incident. This witness has corroborated the fact of seizure of the wood at the information of Makhan Singh S/o Saudagar Singh. This witness has also deposed that he came to village Tukri along with Makhan Singh and another person in order to procure the permit of the wood and when they reached near the house of Makhan Singh S/o Saudagar Singh, the accused persons appeared over there and a fight started. This witness slipped towards the forest and in the forest accused Pritam Singh and his colleagues obtained a permit from him forcibly by showing the fear of death. This witness has stated that he made a report against Pritam Singh, Makhan Singh and Kala Singh, but the prosecution of these persons could not be launched as they had compensated the department. This witness has admitted that Makhan Singh S/o Abtar Singh had complained against him to D.F.O. before this occurrence.

25- On the basis of the aforesaid evidence, we come to the conclusion that the prosecution story finds support from the testimony of the eye witnesses as well as P.W.6, Hari Dutt Pathak. The testimony of Hari Dutt Pathak cannot be discarded only on the ground that Makhan Singh S/o Abtar Singh made a complaint against him before this occurrence.

26- Learned counsel for the appellants further argued that the injury of Pritam Singh, one the accused/appellants, has not been explained from the side of the defence and non-explanation of the injury of accused Pritam Singh leads to the conclusion that the occurrence had not taken place in the manner as the prosecution has stated. It has been vehemently argued before us that the prosecution witnesses tried to improve the case by saying that Pritam Kaur and Uttam Kaur tried to snatch the spear of accused Pritam Singh and in that scuffle caused injury to accused/appellant Pritam Singh, therefore, this situation clearly indicate that the case of the prosecution is an after-thought and cannot be believed at this stage.

27- We do not find any force in this argument. The injury report of Pritam Singh indicates that there is only one injury on his person which could be caused in the manner as has been alleged by the prosecution. The prosecution case cannot be disbelieved on the ground of mere omission of this aspect. Keeping in view the fact that a young-man had died at the spot and the other persons have also sustained injuries, therefore, it was not expected from all the persons on the complainant side to give a detailed version of the incident at the time of lodging of the first information report as well as in their statements given to the I.O. P.W.3, Mukhtiar Singh

in his examination-in-chief has admitted that he had seen that bleeding was coming out of the injury of accused Pritam Singh. All the witnesses have clearly deposed that Uttam Kaur and Pritam Kaur wanted to snatch the spear of accused Pritam Singh and in that scuffle the spear hit accused Pritam Singh resulting an injury on his person. Dr. A.K. Saxena, D.W.1 has medically examined the injury of accused Pritam Singh and as per the medical examination report only one punctured wound was found in his stomach. This the cumulative effect of all the evidence adduced by the prosecution is that the injury of accused Pritam Singh has been well explained, of course, the explanation was not offered at the earlier stage, but if it has come at the later stage, even then it does not root-out the prosecution case.

28- It is thus quite clear on the basis of the evidence on record that in the incident, which occurred on 15-6-1986 between 3 to 4 P.M., Chand Singh succumbed to injuries and Mukhtiar Singh, Makhan Singh S/o Bhagwan Singh, Smt. Pritam Kaur and Smt. Uttam Kaur sustained injuries on their persons.

29- As far as the role assigned to the accused persons is concerned, we have to again thoroughly scrutinize the evidence on record. The first information report shows that accused Abtar Singh and Jeet Singh were having lathis in their hands; accused Gurnam Singh was having a knife; accused Pritam Singh was armed with a spear; accused Satnam Singh with an axe; accused Harnam Singh with Kampa and accused Makhan Singh was having a gun in his hand. This report further shows that all the accused persons assaulted with their weapons but the specific role has not been assigned to any of the

accused in the first information report. Further in the evidence of P.W.2, Makhan Singh S/o Bhagwan Singh it has come that Abtar Singh and Jeet Singh were having Lathis; Pritam Singh was having a spear; Makhan Singh was having a gun; Gurnam Singh was armed with a knife; Satnam Singh was having an axe and Harnam Singh was having Kampa in his hand. This witness further stated that Makhan Singh S/o Saudagar Singh and Chand Singh were assaulted by accused Gurnam Singh with knife and accused Pritam Singh assaulted Chand Singh with spear, while the other accused persons assaulted Pritam Kaur and Uttam Kaur with lathis. This witness has further deposed that Uttam Kaur and Pritam Kaur wanted to snatch the spear and during this scuffle the spear caused injury on the person of Pritam Singh. This witness in his cross-examination has again stated that Gurnam Singh assaulted Chand Singh with knife and Pritam Singh assaulted with spear at Chand Singh. This witness has further stated that the axe, which the accused Satnam Singh was having, did not cause any injury to any one.

30- Again P.W.3, Mukhtiar Singh has stated that accused Abtar Singh and Jeet Singh were having lathis; Makhan Singh was armed with a gun; Gurnam Singh with a knife; Pritam Singh with a spear and Satnam Singh was having a Kampa. This witness has further deposed that Pritam Singh assaulted with spear at Chand Singh which hit on his back and thereafter Gurnam Singh assaulted Chand Singh with knife. This witness has stated that when he tried to intervene, then he was also assaulted by Kampa. This witness has further deposed that Pritam Kaur, Uttam Kaur and Makhan Singh were assaulted by the accused persons with sticks. He has further deposed that Pritam Kaur

and Uttam Kaur tried to snatch the spear from Pritam Singh and during this scuffle Pritam Singh sustained injury. This witness has further deposed that Kulhari did not cause injury to any one and gun was also not used during the course of the incident.

31- Further P.W.5, Makhan Singh S/o Saudagar Singh has stated that accused Pritam Singh was having spear; accused Satnam Singh an axe; accused Harnam Singh Kampa; accused Gurnam Singh knife; accused Makhan Singh was armed with a gun and accused Abtar Singh as well as accused Jeet Singh were having lathis in their hands. He has further deposed that Pritam Singh assaulted with spear at Chand Singh due to which he died at the spot. This witness has stated that he thereafter slipped from the place of the occurrence. He has also deposed that Pritam Kaur and Uttam Kaur tried to snatch the spear from accused Pritam Singh and in this scuffle Pritam Singh sustained spear injury on his person.

32- It is, therefore, quite clear from the deposition of the eye witnesses that the lathis, knife and spear were used in this occurrence and by the use of these weapons the complainant side sustained injuries on their persons. Deceased Chand Singh also sustained spear and knife injuries on his person and on account of the same he died at the spot.

33- The medical version, which has been adduced by the prosecution, shows that Mukhtiar Singh sustained incised wound on right upper back of chest and as per the doctor this injury could be caused by some sharp-edged weapon. Further Makhan Singh S/o Bhagwan Singh was medically examined by the doctor and four

contusions were found on his person. The doctor opined these injuries could be caused by blunt object. The injuries on the person of Pritam Kaur and Uttam Kaur were also found to be contusions and as per the opinion of the doctor could be caused by blunt object. Therefore, it is quite clear that the use of the sticks as well as knife and spear in the occurrence cannot be ruled out. The post mortem report of deceased Chand Singh shows that he sustained two incised wounds and one punctured wound as ante-mortem injuries on his person. Therefore, these injuries also could have been caused by the knife and the spear, which were being carried by the accused Gurnam Singh and Pritam Sigh respectively at the time of the occurrence.

34- It is, therefore, quite clear that accused persons Abtar Singh and Jeet Singh, who were having Lathis, Gurmamn Singh who having knife and Pritam Singh who was arm with a spear had participated in this occurrence and caused injuries on the persons of the complainant side with their respective weapons.

35- As far as the use of Kampa is concerned, the witnesses have stated that accused Harnam Singh was having Kampa in his hand and he assaulted with Kampa due to which Mukhtiar Singh sustained injury on his person. Mukhtiar Singh has stated that when he went to intervene, then he was assaulted with Kampa on his back. P.W.2, Makhan Singh has also stated that Kampa was used in the occurrence. P.W.4, Dr. Kalyan Singh has medically examined Mukhtiar Singh and he has stated in his deposition that the injury of Mukhtiar Singh could have been caused by Kampa. P.W.5, Makhan Singh S/o saudagar Singh has also stated that Harnam Singh was having Kampa in his hand and he assaulted the

Complainant side with Kampa. Therefore, on the strength of the evidence of the prosecution, it is also clear that Harnam Singh, who was armed with a Kampa at the time of occurrence, had used Kampa and on account of the use of Kampa by Harnam Singh the prosecution witness P.W.3, Mukhtiar Singh sustained injury on his person.

36- As far as the role assigned to the accused/appellants Satnam Singh and Makhan Singh S/o Abtar Singh is concerned, both these appellants are alleged to have been armed with an axe and gun respectively. The evidence which has been adduced by the prosecution merely indicates that these persons were also present at the scene of the occurrence along with their respective weapons, but nothing has come out in the evidence which may suggest that these persons had either used their weapons or had caused any injury on the person of any one on the complainant side.

37- By virtue of Section 149 I.P.C. every member of an unlawful assembly at the time of the commission of the offence is guilty of an offence committed by any member of the unlawful assembly. The section creates constructive or vicarious liability of the members of the unlawful assembly for unlawful acts committed pursuant to the common object by any other member of that assembly. The basis of constructive guilty under Section 149 I.P.C. is mere membership of an unlawful assembly. In a case under Section 149 the accused if is a member of the unlawful assembly, the common object of which is to commit a certain crime and if that crime is committed by one or more members of that assembly every person who happened to be a member of that assembly would be liable for that criminal act by virtue of his being a

member of it, irrespective of the fact whether the actually committed the act or not. To attract Section 149 I.P.C. the prosecution must prove that the commission of the offence was by any member of an unlawful assembly and such offence must have been committed in prosecution of the common object of the assembly or must be such that the members of the assembly knew that it was likely to be committed. Unless these three elements are satisfied by the prosecution the accused cannot be convicted with the aid of Section.

38- We are of the view that the accused/appellants Satnam Singh and Makhan Singh are liable to be acquitted of the charge U/S 302 read with Section 149 I.P.C. and the sentence of life imprisonment awarded to them, is liable to be quashed.

39- Further accused/appellants Satnam Singh and Makhan Singh have been convicted U/S 307/149 I.P.C. and sentenced to 10 years R.I. for causing injuries on the persons of complainant side. To constitute an offence U/S 307 I.P.C., two ingredients of the offence must be present-

(a) an intention of or knowledge relating to commission of murder; and

(b) the doing of an act towards it.

The evidence on record shows that the presence of these persons become doubtful for the simple reason that none from the side of the complainant sustained any injury either from the axe or from the gun nor any evidence has come on the record which may suggest that these accused/appellants had in fact used their respective weapons in their hands. These two accused/appellants are also liable to be acquitted of the

Charges U/Ss 307/149 I.P.C., 148 I.P.C. and 323/149 I.P.C. Both these two accused/appellants are entitled to be acquitted by extending them the benefit of doubt.

40- As far as the conviction and sentence imposed against the accused/appellants Abtar Singh, Gurnam Singh, Pritam Singh, Harnam Singh and Jeet Singh U/S 307/149 I.P.C. is concerned, we do not find any evidence which may suggest that these accused/appellants could be convicted and sentenced U/S 307/149 I.P.C. The nature of injuries and the circumstances in which the incident took place, clearly show that there is a complete lack of evidence of intention to cause such injuries for which the accused/appellants could have been convicted U/S 307/149 I.P.C. The nature of the injuries sustained by Mukhtiar Singh, Makhan Singh, Pritam Kaur and Uttam Kaur is simple. Therefore, it cannot be said that the accused/appellants Abtar Singh, Gurnam Singh, Pritam Singh, Harnam Singh and Jeet Singh were having an intention of or knowledge relating to commission of murder. The intention or knowledge of the accused persons must be such as is necessary to constitute murder and in the absence of intention or knowledge, which are the necessary ingredients of Section 307 I.P.C., there cannot be an offence of 'attempt to murder', To our mind the accused/appellants Abtar Singh, Gurnam Singh, Pritam Singh, Harnam Singh and Jeet Singh are liable for an acquittal U/S 307/149 I.P.C.

41- For the reasons stated above we are of the view that the prosecution has established the guilt of the accused/appellants Abtar Singh, Gurnam Singh, Pritam Singh, Harnam Singh and Jeet Singh beyond reasonable doubt for the charges U/Ss 302/149 I.P.C. and 323/149 I.P.C. The prosecution has also successfully established

the guilt of the accused/appellants Abtar Singh and Jeet Singh U/S 147 I.P.C. and accused/appellants Gurnam Singh, Pritam Singh, and Harnam Singh U/S 148 I.P.C.

42- Accordingly by the appeal is partly allowed. The impugned judgment and order dated 19-7-1989, passed by the trial court convicting the accused/appellants Abtar Singh and Jeet Singh U/S 147 I.P.C. and sentencing both of them to two years R.I.; convicting the accused/appellants Gurnam Singh, Pritam Singh, and Harnam Singh U/S 148 I.P.C. and sentencing each of them to two years R.I. as well as convicting the accused/appellants Abtar Singh, Jeet Singh, Gurnam Singh, Pritam Singh and Harnam Singh U/Ss 302/149 I.P.C. and 323/149 I.P.C. and sentencing each of them to 'life imprisonment' and six months R.I. respectively, is hereby confirmed. All these accused/appellants, except Pritam Singh, are already in jail. They shall be detained in jail to serve out the sentences awarded against them. The C.J.M. concerned shall take steps against the absconding accused/appellant Pritam Singh in order to send him jail.

43- However, the impugned judgment and order convicting tand sentencing the accused/appellants Abtar Singh, Jeet Singh, Gurnam Singh, Pritam Singh and Harnam Singh U/S 307/149 I.P.C. and sentencing each of them to ten years R.I., is set aside.

44- Further the impugned judgment and order passed by the trial court convicting the accused/appellants Satnam Singh and Makhan Singh for the offences U/Ss 148 I.P.C., 302/149 I.P.C., 307/149 I.P.C., and 323/149 I.P.C. sentencing both of them to two years R.I.; imprisonment for life; ten years R.I. and six months R.I.

respectively is hereby set aside and both the accused persons are acquitted of the aforesaid charges levelled against them, after extending them the benefit of doubt. Both these accused/appellants are in jail, they shall be set-free forthwith, if not wanted in other connection.

45- Let the record immediately be returned back to the court concerned for compliance to be reported to the court within one month.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

Dated: November 28, 2006

ISB